



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 8741-98

28 April 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed enclosure (1) with this Board requesting, in effect, that the record be corrected by removing the nonjudicial punishment of 5 December 1997 from the record, and showing that she was retained on active duty to retire under the provisions of the Temporary Early Retirement Authority (TERA).

2. The Board, consisting of Mr. Zs Salman, Mr. Brezna and Mr. Adams, reviewed Petitioner's allegations of error and injustice on 25 April 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Navy on 13 January 1992 for six years and subsequently extended that enlistment for nine months. The record shows that she received nonjudicial punishment on 24 March 1994 for disrespect, use of provoking words and disorderly conduct. The punishment imposed included a suspended reduction in rate.

d. On 5 November 1995 Petitioner reported onboard the USS SANTA BARBARA (AE 28). Subsequently, Petitioner was seen by mental health professionals for stress and conflicts with her coworkers. On 5 December 1997 she received nonjudicial

punishment for assault. The punishment imposed included forfeitures of pay totaling \$500 and a suspended reduction in rate from IC2 (E-5) to IC3 (E-4). Immediately thereafter, she was hospitalized for psychiatric evaluation. On 15 December 1997 the suspension was vacated and she was reduced in rate to IC3 after she disobeyed an order to return to the SANTA BARBARA and became an unauthorized absentee.

e. On 22 December 1997 a medical board found that Petitioner suffered from a major depressive disorder and recommended that she be placed on six months of limited duty. The medical board also concluded, concerning the misconduct, that she lacked substantial capacity to appreciate the criminality of her misconduct and she lacked substantial capacity to conform her conduct to the requirement of the law. The medical board stated as follows:

The member had been suffering from a chronic adjustment reaction which deteriorated, over time, to a major depressive disorder. She was psychiatrically hospitalized immediately after the alleged incident and she continues to receive outpatient psychiatric services.

In March 1998 Petitioner was found unfit for duty with a disability rated at 10% and was recommended for discharge with severance pay. Petitioner accepted this finding on the condition that she be retained on active duty to qualify for retirement under TERA.

f. On 12 May 1998 the Bureau of Naval Personnel (BUPERS) approved Petitioner's request for retention on active duty in a permanent limited duty status until 31 October 1998 so that she could apply for retirement under TERA. BUPERS must have discovered that she had been reduced to IC3 and was ineligible for retention and retirement under TERA because, on 19 May 1998, the approval to remain on active duty was canceled. It was directed that a final finding for separation due to her disability be made. On 26 June 1998 she accepted the findings of the Physical Evaluation Board. Subsequently, her discharge with disability severance pay was directed and she was so discharged on 7 August 1998. The record shows that she was paid severance pay in the amount of \$34,408.50. At that time she had completed 16 years, 8 months and 4 days of active service.

g. In her application Petitioner states, in effect, that she was having conflicts with her female coworkers and was provoked into the assault. Concerning the offense which led to her reduction in rate, she states that she did not return to SANTA BARBARA as ordered because she was afraid of retaliation by

her coworkers.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that there is no evidence that the findings of the medical board concerning her mental competency were ever considered by the commanding officer who imposed nonjudicial punishment and vacated the suspended reduction, or by BUPERS. Given the mental competency findings, the Board concludes that the imposition of the nonjudicial punishment and the vacation proceedings were unjust and all documentation concerning those actions should be removed from the record.

Had the nonjudicial punishment and vacation action not been imposed, Petitioner would have continued to service in the rate of IC2. Therefore, the Board believes that she would have been retained on active duty to retire under TERA. Accordingly, the record should be further corrected to show that she was not discharged on 7 August 1998 but continued to serve until she transferred to the Fleet Reserve under the provisions of TERA on 31 August 1998.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing all evidence of the nonjudicial punishment of 5 December 1997 and the subsequent vacation action which resulted in her reduction in rate. With this action, the record will show that she has continuous service as an IC2.

b. That Petitioner's naval record be further corrected to show that she was not discharged on 7 August 1998 but continued to serve until she transferred to the Fleet Reserve under the provisions of TERA on 31 August 1998.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and

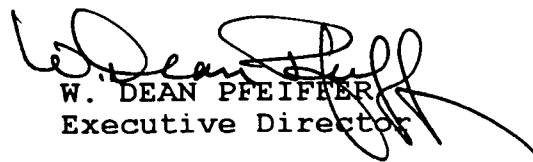
complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director